

and the extent to which like assurances will be required of contractors and subcontractors, transferees, successors in interest, and other participants in the program.

#### **§ 113.5 Compliance information.**

(a) *Cooperation and assistance:* SBA shall to the fullest extent practicable seek the cooperation of applicants and recipients in obtaining compliance with this part and shall provide assistance and guidance to applicants and recipients to help them comply voluntarily with this part. Recipients are expected to continually evaluate their compliance status, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons.

(b) *Compliance reports:* Each applicant or recipient shall keep such records and submit to SBA timely, complete and accurate compliance reports at such times, and in such form and containing such information, as SBA may determine to be necessary to enable SBA to ascertain whether the applicant or recipient has complied or is complying with this part. In the case of a small business concern which receives financial assistance from a development company or from a small business investment company, such concern shall submit to the company such information as may be necessary to enable the company to meet its reporting requirements under this part.

(c) *Access to sources of information:* Each applicant or recipient shall permit access by SBA during normal business hours to such of its books, records, accounts and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of an applicant or recipient is in the exclusive possession of any other agency, institution or person; and such agency, institution or person shall fail or refuse to furnish this information, the applicant or recipient shall so certify in its report and shall set forth what efforts it has made to obtain this information.

(d) *Information to the Public.* Each recipient shall make available to persons entitled under this part to protection against discrimination by the recipient

such information as SBA may find necessary to apprise them of their rights to such protection.

(1) In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of equal opportunity. If the efforts required of the applicant or recipient under § 113.5(b) to provide information as to the availability of equal opportunity, and the rights of individuals under this regulation, have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make equal opportunity fully available to racial, qualified handicapped, nationality groups and persons who because of their sex were previously subjected to discrimination.

(2) Even though an applicant or recipient has never used discriminatory policies, the opportunities in the business it operates may not in fact be equally available to some racial, qualified handicapped, or nationality groups. In such circumstances a recipient may properly give special consideration to race, color, religion, sex, marital status, qualified handicap or national origin to make the opportunities more widely available to such groups.

#### **§ 113.6 Conduct of investigations.**

(a) *Periodic compliance reviews.* SBA shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes that he, she or any class of individuals has been subjected to discrimination prohibited by this part may, personally or through a representative, file with SBA a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by SBA.

(c) *Investigations.* SBA will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the applicant or recipient, the circumstances

under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the applicant or recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, SBA will so inform the applicant or recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 113.7.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, SBA will so inform the applicant or recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No applicant or recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this part or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

#### **§ 113.7 Procedure for effecting compliance.**

(a) *General.* (1) If there appears to be a failure or threatened failure to comply with this part and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by suspending, terminating, or refusing any financial assistance approved but not yet disbursed to an applicant. In the case of loans partially or fully disbursed, compliance with this part may be effected by calling, canceling, terminating, accelerating repayment, or suspending in whole or in part the financial assistance provided. In addition compliance may be effected by any other means authorized by law.

(2) Such other means may include but are not limited to (i) legal action by SBA to enforce its rights, embodied in the assurances described in § 113.4; (ii) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States; and (iii) any applicable proceedings under State or local law.

(b) *Noncompliance with § 113.4.* If an applicant fails or refuses to furnish an assurance required under § 113.4 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. SBA shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that SBA shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part. Such proceedings shall be conducted in accordance with the provisions of part 134 of this chapter by an Administrative Law Judge of the Office of Hearings and Appeals, who shall issue an initial decision in the case. The Administrator shall be the reviewing official for purposes of § 134.228. The applicant's failure to file a timely motion in accordance with §§ 134.222 and 134.211, requesting that the matter be scheduled for an oral hearing, shall constitute waiver of the right to an oral hearing but shall not prevent the submission of written information and argument for the record in accordance with the provisions of part 134.

(c) *Condition precedent.* Under this part 113, no order suspending, terminating, refusing, calling, canceling, or accelerating repayment of financial assistance in whole or in part shall become effective until (1) SBA has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means; (2) there has been an express finding on the record after an opportunity for an oral hearing, of a failure by the applicant or recipient to